

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION

In the Matter of Protest of:

CASE No. 2010-135

Sexual Trauma & Counseling Center

Materials Management Office

POSTING DATE: November 1, 2010

RFP No. 5400001888

Support Services for Victims of Crime

Governor's Office of

Victim's Assistance

MAILING DATE: November 1, 2010

This matter is before the Chief Procurement Officer (CPO) pursuant to a letter of protest from the Sexual Trauma & Counseling Center (STCC). With this request for proposals (RFP), the Materials Management Office (MMO) attempts to procure support services for victims of crime on behalf of the Governor's Office of Victim's Assistance (GOVA). During review of the proposals, MMO determined STCC's proposal to be nonresponsive to the requirements of the RFP. In the letter, STCC protested MMO's notice of intent to award alleging that MMO wrongly determined its proposal to be nonresponsive.

In order to resolve the matter, the CPO conducted a hearing October 27, 2010. Appearing before the CPO were STCC, represented by Martha Busterna, Executive Director; GOVA, represented by Renee Graham; and MMO, represented by John Stevens, State Procurement Officer.

NATURE OF PROTEST

The letter of protest is attached and incorporated herein by reference.

FINDINGS OF FACT

The following dates are relevant to the protest:

1. On July 22, 2010, MMO published the RFP. (Ex. 1)
2. On August 5, 2010, MMO issued Amendment # 1. (Ex. 2)
3. On August 23, 2010, MMO opened the seven proposals received. (Ex. 3)
4. On September 20, 2010, MMO posted its notice of intent to award to:

<u>Offeror</u>	<u>Award Amount</u>
• Care House of the Pee Dee	\$20,990
• Foothills Alliance	22,000
• Pee Dee Coalition Against Domestic & Sexual Assault	20,000
• Safe Homes-Rape Crisis Coalition	22,379
• Sister Care	51,400

5. On September 21, 2010, STCC filed its protest with the CPO.

DISCUSSION

The solicitation sought proposals to provide support and direct services to victims of crime across the state for the period of August 24, 2010 to June 30, 2011. (Ex. 1, p. 3, Scope of the Solicitation and Maximum Contract Period) It stated a budget for the procurement of \$1,000,000. (Ex. 1, p. 3, Budget Maximum) The solicitation required offerors to submit a budget offering twenty percent (20%) match to the funds being requested. It required that the matching funds offered by providers to be in the form of “20% cash match of funds awarded.” (Ex. 1, p. 25, Funding Requirements)

STCC submitted a proposal requesting \$49,060 in state funds that it offered to match with \$12,265 for a total contract value of \$61,325. On August 26, 2010, Chris Manos, MMO Procurement Manager, determined STCC’s proposal nonresponsive to the requirement that offerors submit matching funds in the form of a cash match. He wrote, “The proposal by Sexual Trauma & Counseling Center clearly stated in their Budget Narrative that the 20% Cash Match was provided as In-Kind (services)”,

not cash, as required by the RFP. (Ex. 5) Following his determination, MMO posted awards to other offerors and excluded STCC. STCC protests Mr. Manos' determination that its proposal was nonresponsive.

CONCLUSIONS OF LAW

The Consolidated Procurement Code (Code) requires that awards be posted to the "the lowest responsive and responsible" bidders. (11-35-1520(10)) The Code defines a responsive bidder or offeror as, "a person who has submitted a bid or offer which conforms in all material aspects to the invitation for bids or request for proposals." (11-35-1410(7)) Specific to RFPs, the Code requires "Award must be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the State, taking into consideration price and the evaluation factors set forth in the request for proposals." (11-35-1530(9)) At issue for the CPO is whether STCC's proposal was responsive to the requirement of the RFP that offerors propose 20% matching funds in cash.

In its proposal, STCC offered a total budget of \$61,325 including a request for state funds of \$49,060 and offering matching funds of \$12,265. After conferring with the evaluation committee from the Governor's Office, Mr. Manos declared STCC ineligible for award due to their belief that STCC's offer of matching funds was in the form of "in-kind" services, not cash. In his determination, Mr. Manos relied upon annotations in STCC's budget narrative of the proposal which offered, "In-Kind: 20% Cash Match" for a forensic interviewer, a family advocate, and a therapist. (Ex. 4, Budget Narrative)

STCC argues that it did comply with the requirement for a cash match of 20% arguing that its price proposal offered a "cash match" of \$12,265 (Ex. 4, Price Proposal) and its budget narrative offered a "20% cash match." (Ex. 4, Budget Narrative) The CPO agrees. Based upon STCC's specific language that offered a "20% cash match" in its budget narrative and an actual "20% cash match" in its

price proposal¹, the CPO concludes that the only reasonable interpretation of STCC's proposal is that STCC offered a cash match, not in-kind services.

The CPO finds STCC's proposal to be compliant with the requirement of the RFP for a 20% cash match. Therefore, the CPO directs MMO to consider STCC's proposal responsive to this requirement and to evaluate the proposal for consideration for award in accordance with the requirements of the Code.

DETERMINATION

For the aforementioned reasons, the protest is granted.



R. Voight Shealy
Chief Procurement Officer
for Supplies and Services

November 1, 2010

Date

Columbia, S.C.

¹ STCC offered in its price proposal spreadsheet the following budget totals for the contract: "Grantor - \$49,060, 20% Cash Match - \$12,265, Total - \$61,325." Not only does the heading clearly state "20% Cash Match", but the \$12,265 amount of the cash match offered equals 20% of the total proposal.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

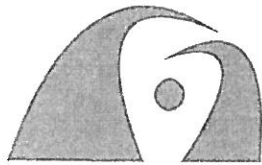
(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: www.procurementlaw.sc.gov

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 83.1 of the General Appropriations Act for Fiscal Year 2010-2011, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410...Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, a business must retain a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003).



SEXUAL TRAUMA & COUNSELING CENTER

September 21, 2010

Chief Procurement Officer
Materials Management Office
1201 Main Street, Suite 600
Columbia, SC 29201

Re: RFP 5400001888

To Whom It May Concern:

This letter is a formal protest to the determination of Sexual Trauma & Counseling Center's proposal to RFP 5400001888 as *Non-Responsive*.

Based on your determination "The proposal submitted by Sexual Trauma & Counseling Center clearly stated in their Budget Narrative that the 20% Cash Match was provided as In-Kind (services). The solicitation clearly states on page 25, 'Contractor must provide 20% Cash Match of funds awarded.'"

In our proposal, Section III, Price Proposal outlines the requested Grantor contribution and the Sexual Trauma & Counseling Center's commitment to a 20% Cash Match. The Budget Narrative further details the intent of the Sexual Trauma & Counseling Center to provide a 20% Cash Match as an In-Kind contribution to the fulfillment of the Contractor obligation. In this proposal *In-Kind* is defined as cash money provided by a source other than the Grantor to complete the proposed project. In preparing this proposal we did not consider *services* as match for this project. The Sexual Trauma & Counseling Center's intent is to apply money from the following sources as a 20% Cash Match: United Way, Fundraising and Private Contributions.

Based on the clarification of the definition of *In-Kind* and the original intent of the Sexual Trauma & Counseling Center it is our request that the review panel reclassify our proposal as *Responsive* and award our request for funding.

Thank you in advance for your consideration in this matter. For additional information please contact my office at (864) 227 – 1623.

Sincerely,

Martha V. Busterna, M.Ed., LPC
Executive Director

Determination of a Non-Responsive Proposal

August 26, 2010

RFP 5400001888

Sexual Trauma & Counseling Center

Per the Consolidated Procurement Code a "Responsive bidder or offeror" means a person who has submitted a bid or offer which conforms in all material aspects to the invitation for bids or request for proposals [11-35-1410 (7)]. Per the S.C. Code of Regulations, "Reasons for rejecting proposals included but are not limited to: (b) the proposal ultimately fails to meet the announced requirements of the State in some material respect;" [19-445.2095, J (1)(b)].

Page 8 of the solicitation, **Section II Instructions to Offerors – A. General Instructions, RESPONSIVENESS/IMPROPER OFFERS** states the following:

(a) Bid as Specified. Offers for supplies or services other than those specified will not be considered unless authorized by the Solicitation

(c) Responsiveness. Any Offer which fails to conform to the material requirements of the Solicitation may be rejected as nonresponsive. Offers which impose conditions that modify material requirements of the Solicitation may be rejected. If a fixed price is required, an Offer will be rejected if the total possible cost to the State cannot be determined. Offerors will not be given an opportunity to correct any material nonconformity. Any deficiency resulting from a minor informality may be cured or waived at the sole discretion of the Procurement Officer. [R.19-445.2070 and Section 11-35-1520(13)]

The proposal submitted by Sexual Trauma & Counseling Center clearly stated in their Budget Narrative that the 20% Cash Match was provided as In-Kind (services). The solicitation clearly state on page 25, "Contractor must provide 20% cash match of funds awarded."

Therefore, for the reason stated above, the proposal submitted by Sexual Trauma & Counseling Center is found to be nonresponsive and not considered for award.

**Chris Manos
Procurement Manger
State Procurement**